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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/772,766

02/04/2004

Joaquin Romay

81687

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22242

7590

09/02/2005

FITCH EVEN TABIN AND FLANNERY  
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CHICAGO, IL 60603-3406

EXAMINER

HOEY, ALISSA L

ART UNIT

PAPER NUMBER

3765

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

*TAL*

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/772,766	ROMAY, JOAQUIN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Alissa L. Hoey	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 July 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11, 13-38 and 46-49 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 and 46-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This is in response to amendment received on 07/05/05. Claims 1, 13, 26, 46 and 48 have been amended.

### ***Election/Restrictions***

2. Claims 1-11 and 46-49 are elected out of the application at this time. Until an allowable generic claim is found claims 1-11 and 46-49 will not be examined on their merits. If claim 13 is found to be a generic allowable claim then 1-11 and 46-49 will be also allowed.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 13, 22, 26 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Nordblad (US 1,314,356).

In regard to claim 13, Nordblad teaches a sock (1) comprising a heel section adapted to receive a heel of a foot of a wearer therein (figure 1, lines 55-66). An arch section and a plurality of separated, closed to sections (3, 2) separated by trough regions to receive the toes of the foot of the wearer. The toe sections joined by nested, overlapping material portions where the toe sections intersect (figures 1-3, lines 45-77).

In regard to claim 22, Nordblad teaches a sock (1) wherein each toe section includes a top portion above the toe and a bottom portion below the toe that are seamless (figure 1-3, lines 55-66).

In regard to claim 26, Nordblad teaches a method of making a sock by forming a heel section adapted to receive a heel of a foot of a wearer therein. Forming an arch section and forming a plurality of separated, closed toe sections separated by trough regions to receive toes of the foot of the wearer. The toe sections joined by nested, overlapping material portions where the toe sections intersect (figures 1-3, lines 37-77).

In regard to claim 35, Nordblad teaches each toe section (2, 3) including a top portion above the toe and a bottom portion below the toe that are seamless (lines 55-66).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 19, 20 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nordblad.

In regard to claim 19 and 20, Nordblad fails to teach the heel section having sides with opposite angled stitched seams or a generally bilaterally symmetrical trapezoidal shape.

At the time the invention was made, it would have been obvious to have provided the heel section having sides with opposite angled stitched seams or a generally bilaterally symmetrical trapezoidal shape because Applicant has not disclosed that the heel section having sides with opposite angled stitched seams or a generally bilaterally symmetrical trapezoidal shape provides an advantage is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the heel section having sides with opposite angled stitched seams or a generally bilaterally symmetrical trapezoidal shape or having just a simple knit construction because as long as the sock has a heel section the shape of the heel section is not critical and as supported in Applicant's specification on page 8-9, lines 19-29 and 1-3. Therefore, it would have been an obvious matter of design choice to modify Nordblad to obtain the invention as specified in claims 19 and 20.

It would have been obvious to have provided the garment of Nordblad in the same methods as provided in claims 32 and 33, since the garment of Nordblad has all the structure as required and critical in claims 32 and 33.

7. Claims 14, 15, 17, 18, 27, 28, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nordblad in view of Gallagher (US 5,555,565).

Nordblad provides a garment as described above in claim 13. However, Nordblad fails to teach the sock being made out of an air-permeable, hydrophobic fiber material, the interior portion and the exterior portion including a greater or equal amount

of hydrophobic fiber material than the exterior portion and the hydrophobic fiber material comprises hollow-core tetra-channels.

In regard to claim 14, Gallagher teaches the sock being made out of at least partially of an air-permeable, hydrophobic fiber material (column 5, lines 37-41).

In regard to claim 15, Gallagher teaches the sock including an interior and exterior portion including a greater or equal amount of hydrophobic fiber material than the exterior portion (column 3, lines 3-44).

In regard to claim 17, Gallagher teaches the hydrophobic fiber material comprising channels (column 5, lines 37-41).

In regard to claim 18, Gallagher teaches the hydrophobic fiber material having at least one of a tetra-channeled configuration (column 5, lines 37-41).

However, Gallagher fails to teach the tetra-channels having a hollow-core configuration.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the tetra-channels having a hollow-core configuration because Applicant has not disclosed that the tetra-channels having a hollow-core configuration provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the tetra-channels having a hollow-core configuration or not because as long as the tetra-channels are present to provide for air permeability and wicking to the sock the hollow-core configuration is not critical and as supported in Applicant's specification on page 5,

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lines 18-25). Therefore, it would have been an obvious matter of design choice to modify Gallagher to obtain the invention as specified in claim 18.

It would have been obvious to have provided the sock of Nordblad with hydrophobic fiber material including interior and exterior portions of Gallagher, since the sock of Nordblad provided with a hydrophobic fiber material would provide a sock article that wicks perspiration away from the user's toe and creates less bulk than a hydrophilic fiber material.

It would have been obvious to have provided the garment of Nordblad and Gallagher in the same methods as provided in claims 27, 28, 30 and 31, since the garment of Nordblad and Gallagher has all the structure as required and critical in claims 27, 28, 30 and 31.

8. Claims 14, 16, 21, 23, 24, 27, 29, 34, 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nordblad in view of Dahlgren (US 4,898,007).

Nordblad teaches a sock as described above in claim 13. However, Nordblad fails to teach the sock made of at least partially an air-permeable, hydrophobic fiber material, and the sock including one or more sections with multiple adjacent high density and low density hydrophobic fiber material areas. Further, Nordblad fails to teach the arch support section including multiple adjacent high density and low density hydrophobic fiber material areas. The sock shaft section including an open end through which the foot of the wearer is inserted when the sock is put on and adapted to encircle a lower part of a leg of a wearer. Finally, Nordblad fails to teach the shaft support

section including multiple adjacent high density and low density hydrophobic fiber material areas.

In regard to claim 14, Dahlgren teaches the sock being made at least partially of an air-permeable, hydrophobic fiber material (column 1, lines 24-61).

In regard to claim 16, Dahlgren teaches the sock including one or more sections with multiple adjacent high density and low density hydrophobic fiber material areas (figure 5: column 5, lines 10-13).

In regard to claim 21, Dahlgren teaches an arch support section including multiple adjacent high density and low density hydrophobic fiber material areas (figure 5).

In regard to claim 23, Dahlgren teaches a sock shaft section including an open end though which the foot of the wearer is inserted when the sock is put on a adapted to encircle a lower part of the leg of a wearer (figures 1-3 and 5).

In regard to claim 24, Dahlgren teaches the shaft support section including multiple adjacent thigh density and low density hydrophobic fiber material areas (figure 5).

It would have been obvious to have provided the sock of Nordblad with the multiple adjacent hydrophobic fiber material areas of Dahlgren, since the sock of Nordblad provided with multiple adjacent hydrophobic fiber material areas to provide for good wicking properties to the user's foot during use.

It would have been obvious to have provided the garment of Nordblad and Dahlgren in the same methods as provided in claims 27, 29, 34, 36 and 37, since the



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garment of Nordblad and Dahlgren has all the structure as required and critical in claims 27, 29, 34, 36 and 37.

9. Claims 25 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nordblad in view of Dahlgren as applied to claim 23 above, and further in view of Allaire et al. (US 4,958,507).

Nordblad and Dahlgren fail to teach the sock including a dual-welt band.

In regard to claim 25, Allaire teaches a sock including a dual-welt band (column 6, lines 48-52).

It would have been obvious to have provided the sock of Nordblad and Dahlgren with the dual-welt band of Allaire, since the sock of Nordblad and Dahlgren provided with a dual-welt band allows the sock garment to stay securely in place on the wearer's leg while worn, without sliding down.

It would have been obvious to have provided the sock of Nordblad and Dahlgren in view of Allaire in the same method as provided in claim 38.

### ***Response to Arguments***

10. Applicant's arguments filed 07/05/05 have been fully considered but they are not persuasive.

Applicant argues that Nordblad (US 1,314,356) teaches the toe pockets overlapping each other along their entire length and that Nordblad has no trough sections because the toe sections overlap along their entire length of the toe pockets and do not intersect.

Examiner notes that the claims as amended do not detail that the toe pockets cannot overlap along their entire length. As long as the toe pockets have a nested overlapping, intersecting material portions and separated trough regions than the amount of overlapping of the toe pockets is not critical. The toe pockets of Nordblad do not overlap at their ends so the statement made by the Applicant that they overlap along their entire length is not proven. The amended language "where the toe sections intersect" is defined as the toe sections overlap, which they do in Nordblad. The definition of "intersect" is to overlap. The amended language "separated by trough regions" is defined as the toe sections are separated by a long and narrow channel or depression, which they are in Nordblad. As seen in figures 1 and 2 the toe pockets have overlapping portions at their lower ends closest to the user's leg. The overlapping feature is that the toe portions adjacent to one another have bottoms that are slanted so as to keep portions of adjacent toes in contact with each other.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

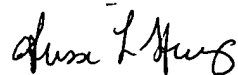
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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